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 NORTHERN DISTRICT OF CALIFORNIA

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6 IN THE UNITED STATES DISTRICT COURT
 7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 KEVIN MORRIS and GLENN R.
 9 SEMOW, On Behalf
 of Themselves and All Others
 Similarly Situated,

10 Plaintiffs,

CIVIL ACTION NO.

11 **NC 07 - 2827**
CLASS ACTION

12 vs.

13 BMW OF NORTH AMERICA, LLC,

14 Defendant.

BY FAX

JURY TRIAL DEMANDED

15 **COMPLAINT**

16 Plaintiffs, Kevin Morris ("Morris") and Glenn R. Semow ("Semow") (collectively

17 "Plaintiffs"), bring this action against Defendant, BMW of North America, LLC ("BMW" or
 18 "Defendant"), on behalf of themselves and all others similarly situated, and allege upon
 19 information and belief, except as to their own actions, the investigation of their counsel, and the
 20 facts that are a matter of public record, as follows:

21 **INTRODUCTION**

22 1. Plaintiffs bring this action to obtain restitution, disgorgement, injunctive and other
 relief individually and on behalf of the proposed classes defined below ("Classes" or "Class").

23 2. This action is brought to remedy violations in connection with Defendant's
 24 design, manufacture, marketing and distribution of 2006 and 2007 BMW 3 series vehicles
 25 equipped with run-flat tires manufactured by Bridgestone Firestone North American Tire, LLC
 26 ("Bridgestone") ("subject vehicles"). The tires on the subject vehicles wear unevenly and
 27 prematurely, resulting in an extremely rough ride and excess noise from the tires. In addition, the
 28

7. This action is brought to remedy Defendant's violations of state consumer
 protection and related statutes based upon the design, manufacture, marketing and distribution of
 the subject vehicles.

JURISDICTION AND VENUE

6. Defendant, BMW, is a Delaware corporation with its principal place of business in New Jersey. BMW does business throughout California, including throughout this district. In New Jersey, BMW does business throughout California, including throughout this district. BMW maintains a principal place of business in California, located in Ontario, San Bernardino County, California. Plaintiffs' Declarations, as required under Cal. Civ. Code § 1780(c), reflect that BMW does business in this judicial district, including the county in which this Court sits, are attached collectively as Exhibit "A."

5. Plaintiff, Semow, is and at all times relevant to this action has been, a resident of Oakland, California. On or about September 25, 2006, Semow purchased a new 2006 BMW 330i (VIN WBAVB335X6KS31426), equipped with Bridgestone Potenza RE050 run-flat tires ("Potenza run-flat tires") from Weatherford BMW, an authorized BMW dealership located in

4. Plaintiff, Morris, is and at all times relevant to this action has been, a resident of Ross, California. On or about August 4, 2005, Morris purchased a new 2006 BMW 330i (VIN WBAVB3396KR79097), equipped with Bridgestone Turanza EL42 RFT run-flat tires ("Turanza run-flat tires"), from Courtesy Motors, an authorized BMW dealership located in

THE PARTIES

3. Plaintiffs assert claims individually and/or collectively under the Unfair Competition Law (“UCL” or “Section 17200”), Business and Professional Code § 17200 et seq., the California Secret Warranty Act (“Secret Warranty Act”), Civil Code § 1795.90 et seq., the California Secret Warranty Act (“Secret Warranty Act”), Civil Code § 1795.90 et seq., the Consumer Legal Remedies Act (“CLRA”), Civil Code § 1750 et seq., and the Song-Beverly Act, Civil Code § 1790 et seq., on behalf of themselves and the Class.

tires on the subject vehicles must be replaced prematurely -- in many cases after less than 10,000

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy, upon information and belief, exceeds \$5,000,000, exclusive of interests and costs, and this matter is a class action in which certain Class members are citizens of states other than those of Defendant.

2. Because the matter in controversy, upon information and belief, exceeds \$5,000,000, exclusive of interests and costs, and this matter is a class action in which certain Class members are citizens of states other than those of Defendant.

3. Defendants' business in this district, Plaintiff's residence in this district, and a substantial part of the events does business in this district, Plaintiff's residence in this district, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1331, because Defendant

5. 9. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3), on behalf of themselves and the following Classes:

6. Plaintiff's business in this district, Plaintiff's residence in this district, and a substantial part of the events does business in this district, Plaintiff's residence in this district, and a substantial part of the events

7. Plaintiff's business in this district, Plaintiff's residence in this district, and a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district.

8. Plaintiff Class:

9. All current and former owners and lessees of 2006 and 2007 BMW 3 series vehicles equipped with Turanza EL42 RFT run-flat tires manufactured by Bridgestone and sold or leased in California ("Turanza Class").

10. Plaintiff Class:

11. All current and former owners and lessees of 2006 and 2007 BMW 3 series vehicles equipped with Turanza EL42 RFT run-flat tires manufactured by Bridgestone and sold or leased in California ("Turanza Class").

12. Plaintiff Class:

13. All current and former owners and lessees of 2006 and 2007 BMW 3 series vehicles equipped with Potenza RE050 run-flat tires manufactured by Bridgestone and sold or leased in California ("Potenza Class").

14. Plaintiff Class:

15. All current and former owners and lessees of 2006 and 2007 BMW 3 series vehicles equipped with Potenza RE050 run-flat tires manufactured by Bridgestone and sold or leased in California ("Potenza Class").

16. Plaintiff Class:

17. Plaintiff's reserve the right to amend this Class definition if discovery and further investigation result in the effects at issue in this litigation, and the judge to whom this case is assigned.

18. Plaintiff's reserve the right to amend this Class definition if discovery and further investigation reveals that the Class should be expanded or otherwise modified.

19. The members of the Class are so numerous that joinder of all members would be impracticable. Plaintiff's reasonably estimate that there are thousands of Class members who purchased the subject vehicles. The members of the Class are readily identifiable from information and records in Defendant's possession, custody or control. The disposition of these

20. Plaintiff's reasonably estimate that the Class will provide substantial benefits to the Class.

21. Plaintiff's reserve the right to amend this Class definition if discovery and further investigation reveals that the Class should be expanded or otherwise modified.

22. Plaintiff's reasonably estimate that the Class is so numerous that joinder of all members would be impracticable. Plaintiff's reasonably estimate that there are thousands of Class members who purchased the subject vehicles. The members of the Class are readily identifiable from information and records in Defendant's possession, custody or control. The disposition of these

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predominate over any questions affecting only individual Class members, including, but not limited to, the following:

3. a. Whether Defendant omitted and/or concealed material facts from Plaintiffs and the Class regarding the defective Tramza and Potenza run-flat tires;
4. b. Whether, by the misconduct set forth in this Complaint, Defendant has engaged in unfair or unlawful business practices with respect to the sale of the subject vehicles;
5. c. Whether, by its conduct, Defendant violated the UCL;
6. d. Whether, by its conduct, Defendant violated the CLRA;
7. e. Whether, by its conduct, Defendant violated the Sony-Beverly Act;
8. f. Whether the run-flat tires are defective; and
9. g. Whether, as a result of Defendant's misconduct, Plaintiffs and the Class are entitled to equitable relief and/or other relief, and, if so, the nature of such relief.
10. 13. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs have no interests antagonistic to those of the Class and are not subject to any unique defenses.
11. 14. Plaintiffs will fairly and adequately protect the interests of all members of the Class and have retained attorneys experienced in class action and complex litigation.
12. 15. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy for, *inter alia*, the following reasons:
13. a. It is economically impractical for members of the Class to prosecute individual actions;
14. b. The Class is readily definable;
15. c. Prosecution as a class action will eliminate the possibility of repetitive litigation; and
16. d. A class action will enable claims to be handled in an orderly and expeditious manner. A class action will save time and expense and will ensure uniformity of decisions.
17. 16. Plaintiffs do not anticipate any difficulty in the management of this litigation.
18. 17. Defendant has, or has access to, address information for the Class members,
19. 18. 25. which may be used for the purpose of providing notice of the pendency of this action.
20. 26. 27. 28. 28.

1. This class action is brought on behalf of all current and former owners and lessees
 2. of the subject vehicles sold or leased in California.
 3. 18. This class action is brought on behalf of all current and former owners and lessees
 4. of the subject vehicles at issue are manufactured, marketed and sold by BMW
 5. through its established network of licensed dealers and distributors.
 6. 19. The subject vehicles sold or leased in California.
 7. pursuant to an agreement between the companies, are furnished by Bridgestone to BMW for the
 8. express purpose of placing them on the subject vehicles prior to the distribution and sale of the
 9. subject vehicles to the public. The Turanza run-flat tires are placed on the majority of the subject
 10. vehicles, while the Potenza run-flat tires are placed on certain versions of the subject vehicles
 11. equipped with a "Sport" package.
 12. 21. Prior to marketing and selling the subject vehicles to the Plaintiffs and members
 13. of the Class, Defendant knew or should have known that the Turanza and Potenza run-flat tires
 14. were defective, resulting in premature and uneven tire wear (including excessive noise), requiring
 15. that the tires be replaced after being used, in many cases, less than 10,000 miles, and that such
 16. wear was not consistent with the reasonable expectations of consumers regarding tread wear on
 17. the subject vehicles. In spite of that knowledge, BMW placed the run-flat tires on the subject
 18. vehicles. Vehicles used primarily for personal use are typically driven between 12,000 and
 19. 15,000 miles a year. Thus, the tires on the subject vehicles typically last less than 18 months
 20. (and often less than 12 months) under normal driving conditions.
 21. 22. Prior to marketing and selling the subject vehicles to the Plaintiffs and members of
 22. the Class, Defendant knew or should have known that the need to replace the run-flat tires after
 23. as little as 10,000 miles (or less) was a material fact that should have been disclosed to the
 24. public.
 25. 23. Prior to marketing and selling the subject vehicles to Plaintiffs and members of
 26. the Class, BMW, as the manufacturer of the subject vehicles, performed, or should have
 27. performed, testing on the Turanza and Potenza run-flat tires, to determine that the tires were
 28. subject to premature and uneven tire wear (and excessive noise).

SUBSTANTIVE ALLEGATIONS

24. Notwithstanding its knowledge, BMW knowingly and purposefully failed to disclose to Plaintiffs and members of the Class that the run-flat tires had an unreasonably short life-span and would require far more frequent replacement than normal tires.

25. Defendant's omissions are particularly egregious in light of the fact that the run-flat tires are appreciably more expensive than conventional tires and, thus, owners and lessees of the subject vehicles are not only required to replace the run-flat tires more frequently than anticipated, but they must also do so at extraordinary expense.

26. After receiving numerous complaints from owners of the subject vehicles, BMW, in January 2007, issued a Technical Service Bulletin No. SI B 36 06 06 ("TSB"), acknowledging that the irregular and premature tire wear and attendant loud noise was occurring, often at less than 10,000 miles.

27. Upon information and belief, although the TSB did not expressly reference the potential run-flat tires, those tires, likewise, are suffering from the same premature and uneven tire wear and attendant noise.

28. The TSB issued by BMW constitutes a secret warranty adjustment program pursuant to which BMW, with respect to the subject vehicles equipped with the Turanza run-flat tires, now (a) automatically pays for full replacement of tires (including 100% of labor) experiencing premature and/or irregular tire wear prior to 10,000 miles and (b) automatically pays for fifty percent (50%) of the replacement of tires (including 100% of labor) experiencing premature and/or irregular tire wear prior to 20,000 miles. BMW, however, has failed and refused to notify customers, including Plaintiff Morris, regarding the existence of the secret warranty program in the manner required by the Secret Warranty Act.

29. The secret warranty program offered to pay for all or part of the cost of repairing a condition in the subject vehicles that may substantially affect the vehicles' durability, reliability and/or performance and did not amount to ad hoc adjustments on a case-by-case basis but, instead, constituted a formal program or policy to cover certain repairs under the subject vehicles' warranty for members of the Turanza Class.

30. In light of Defendant's knowledge regarding the effects and problems detailed

28 its intended use. On or about December 19, 2006, Semow took his vehicle to Weatherford BMW
 27 36. Following his purchase, Semow operated his vehicle in a manner consistent with
 26 tires be replaced, often after being used for less than 10,000 miles.
 25 tires were defective and would experience premature and uneven tread wear requiring that the
 24 35. At the time of the purchase, Defendant failed to disclose that the Potenza run-flat
 23 for Semow's personal use.

22 located in Emeryville, California. The purchase was made pursuant to a written contract of sale
 21 equipped with Potenza run-flat tires from Weatherford BMW, an authorized BMW dealership
 20 34. On or about September 25, 2006, Semow purchased a new 2006 BMW 330i
 19 **Plaintiff Semow's Experiences With His BMW**

18 at a total cost of \$450 plus sales tax.
 17 all four tires replaced at Sonnen BMW. He was required to pay for two of the replacement tires,
 16 vehicle. The dealer recommended that all four tires be replaced. On March 27, 2007, Morris had
 15 odometer read 15,416) because his tires were making excessive noise while he was driving his
 14 its intended use. On or about January 15, 2007, Morris took his vehicle to Sonnen BMW (his
 13 33. Following his purchase, Morris operated his vehicle in a manner consistent with
 12 noise) requiring that the tires be replaced, often after being used for less than 10,000 miles.
 11 tires were defective and would experience premature and uneven tread wear (and defendant loud
 10 32. At the time of the purchase, Defendant failed to disclose that the Turanza run-flat
 9 personal use.
 8

7 with Turanza run-flat tires from Courtesy Motors, an authorized BMW dealership located in
 6 31. On or about August 4, 2005, Morris purchased a new 2006 BMW 330i equipped
 5 **Plaintiff Morris' Experiences With His BMW**

4 unconsionable.
 3 and, under all of the circumstances, the limited warranties accompanying the subject vehicles are
 2 under all of these circumstances, constitutes an unlawful, unfair and fraudulent business practice,
 1 above, the provision of a limited warranty with respect to the subject vehicles and their tires,

28. Plaintiffs bring this cause of action on behalf of themselves and on behalf of the
Secret Warranty Act, Civil Code § 1795.90(a).

27. 43. Plaintiffs are and, at all pertinent times, were consumers within the meaning of the
Class.

26. 42. Plaintiffs bring this cause of action on behalf of themselves and on behalf of the
fullly herein.

25. 41. Plaintiffs reallege and incorporate the above allegations by reference as if set forth
fully herein.

FIRST CAUSE OF ACTION
(Violations Of The UCL And Secret Warranty Act)

24. 40. Plaintiffs and Class members have satisfied all obligations and preconditions
necessary to qualify for warranty coverage.

23. 39. Although BMW's express warranty purports to disclaim coverage for tires, BMW
knew or should have known that the Turanza and Potenza run-flat tires it selected and placed on
coveting 4 years or 50,000 miles, whichever comes first.

22. 38. BMW provides Plaintiffs and Class members with an express, written warranty
for the costs he was forced to incur in replacing the Potenza run-flat tires.

21. 37. Semow contacted BMW and placed the company on notice that he was required to
replace the prematurely worn tires at great cost to himself. BMW refused to reimburse Semow
facility, which replaced the two tires for \$771.25 on December 23, 2006.

20. 36. vehicle had only been driven 16,214 miles). The dealership informed Semow that it would cost
\$1,000 to replace the two run-flat tires (\$500 per tire). Rather than pay \$1,000 to Weatherford
BMW to replace the prematurely worn tires, Semow took his vehicle to an independent repair
facility, which replaced the two tires for \$771.25 on December 23, 2006.

19. 35. Semow contacted BMW and placed the company on notice that he was required to
replace the prematurely worn tires at great cost to himself. BMW refused to reimburse Semow
for the costs he was forced to incur in replacing the Potenza run-flat tires.

18. 34. 33. BMW provides Plaintiffs and Class members with an express, written warranty
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17. 32. 31. Semow contacted BMW and placed the company on notice that he was required to
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for the costs he was forced to incur in replacing the Potenza run-flat tires.

13. 26. 25. Semow contacted BMW and placed the company on notice that he was required to
replace the prematurely worn tires at great cost to himself. BMW refused to reimburse Semow
for the costs he was forced to incur in replacing the Potenza run-flat tires.

12. 24. 23. Although BMW's express warranty purports to disclaim coverage for tires, BMW
knew or should have known that the Turanza and Potenza run-flat tires it selected and placed on
coveting 4 years or 50,000 miles, whichever comes first.

11. 22. 21. 20. 19. 18. 17. 16. 15. 14. 13. 12. 11. 10. 9. 8. 7. 6. 5. 4. 3. 2. 1.

28. Class), which outweighs any purported benefit attributable to these policies and practices.

27. 53. Defendant's challenged policies and practices cause harm to victims (here, the members of the consuming public and impact the public interest).

26. 52. Defendant's acts and practices have deceived and/or are likely to deceive one or more acts of unfair competition within the meaning of Section 17200.

25. 51. By engaging in the above-described acts and practices, Defendant has committed set forth above.

24. 50. Defendant has engaged in unfair, unlawful, and fraudulent business practices as practices under Section 17200.

23. 49. By failing to extend the TSB to the Pottenza run-flat tires, BMW engaged in unfair act.

22. 48. By the foregoing conduct, BMW has failed to comply with the Secret Warranty condition (i.e., replacement of tires) prior to acquiring knowledge of the adjustment program. consumers who are eligible under an adjustment program and who incur expenses for repair of a vehicles. In addition, BMW has failed and refused to establish a procedure to reimburse information and belief, has no intention of so notifying owners and lessees of the subject tires as to the existence of these programs as required by the Secret Warranty Act, and, upon and refused to notify owners and lessees of the subject vehicles equipped with Turanza run-flat despite establishing the adjustment program identified above, BMW has failed performance.

21. 46. Upon information and belief, BMW adopted the secret warranty program more than ninety (90) days prior to this date and, as reflected above, this adjustment program addressed conditions that may substantially affect the subject vehicles' durability, reliability or of the TSB in January 2007.

20. 45. BMW adopted an adjustment program within the meaning of the Secret Warranty Act, Civil Code § 1795.90(b), when it adopted and implemented said program through issuance meaning of the Secret Warranty Act, Civil Code § 1795.90(b).

19. 44. Defendant BMW is, and at all pertinent times, was a manufacturer within the

1. 54. Defendant's acts and practices are unlawful because they violate Civil Code §§ 1572, 1709, 1710, 1750 et seq., 1770 et seq., 1790 et seq., 1795.90 et seq., and because they rise to the level of a breach of the implied warranty of merchantability.

2. 55. Plaintiffs have suffered injury in fact, including, but not limited to, paying more to replace the run-flat tires more frequently than they reasonably anticipated and diminution in value of the subject vehicles.

3. 56. Defendant's violations of Section 17200 and BMW's violation of the Secret Warranty Act continue through the date of this Complaint's filing and, absent a Court order, Plaintiff will not comply with its obligations under Section 17200.

4. 57. Plaintiffs, on their own and on behalf of all members of the Class, seek a court order requiring Defendant to immediately desist the above-described acts of unfair competition and for all further relief which is available, appropriate and just to grant, under the UCL and the Secret Warranty Act, including attorneys' fees and costs pursuant to, *inter alia*, Cal. Code of Civ. Proc. § 1021.5.

5. 58. Plaintiffs reiterate and incorporate the above allegations by reference as if set forth fully herein.

6. 59. Plaintiffs bring this cause of action on behalf of themselves and the Class.

7. 60. At all relevant times, Plaintiffs were each a "consumer," as that term is defined in Civ. Code § 1761(d).

8. 61. At all relevant times, the subject vehicles constituted "goods," as that term is defined in Civ. Code § 1761(a).

9. 62. At all relevant times, Defendant was a "person," as that term is defined in Civ.

10. 63. At all relevant times, Plaintiffs purchases of the subject vehicles with the Code § 1761(c).

11. 64. Bridgestone run-flat tires constituted a "transaction," as that term is defined in Civ. Code § 1761(e).

12. 65. At all relevant times, Plaintiff's purchases of the subject vehicles with the Code § 1761(e).

13. 66. Plaintiff brings this cause of action on behalf of themselves and the Class.

14. 67. At all relevant times, Plaintiffs were each a "consumer," as that term is defined in Civ. Code § 1761(d).

15. 68. At all relevant times, the subject vehicles constituted "goods," as that term is defined in Civ. Code § 1761(a).

16. 69. At all relevant times, Plaintiff was a "person," as that term is defined in Civ.

17. 70. Plaintiff's reallege and incorporate the above allegations by reference as if set forth fully herein.

18. 71. Plaintiff's bring this cause of action on behalf of themselves and the Class.

19. 72. Plaintiff's bring this cause of action on behalf of themselves and the Class.

20. 73. Plaintiff's bring this cause of action on behalf of themselves and the Class.

21. 74. At all relevant times, Plaintiff was a "consumer," as that term is defined in Civ.

22. 75. At all relevant times, the subject vehicles constituted "goods," as that term is defined in Civ. Code § 1761(c).

23. 76. At all relevant times, Plaintiff was a "person," as that term is defined in Civ.

24. 77. Bridgestone run-flat tires constituted a "transaction," as that term is defined in Civ. Code § 1761(e).

25. 78. Bridgestone run-flat tires constituted a "transaction," as that term is defined in Civ.

26. 79. At all relevant times, Plaintiff purchases of the subject vehicles with the Code § 1761(c).

27. 80. Bridgestone run-flat tires constituted a "transaction," as that term is defined in Civ.

28. 81. Kevin Morris, et al. v. BMW of North America, LLC CLASS ACTION COMPLAINT Page 10

SECOND CAUSE OF ACTION (Violations Of The CLRA)

64. At all relevant times, Defendant provided "services" to Plaintiffs and the Class, within the meaning of Civil Code § 1761(b).

65. The CLRA provides in relevant part that "[t]he following unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer are unlawful: (19) inserting an unconscionable provision in [a] contract." Civil Code § 1770(a)(19).

66. By excluding tires from coverage under the warranty provided with the subject vehicles at a time when Defendant knew or should have known that the run-flat tires were defective and would need to be replaced frequently (often after less than 10,000 miles), Defendant violated the CLRA by inserting an unconscionable provision in a contract with no warranty coverage for the run-flat tires.

67. Defendant's violations of the CLRA occurred as a result of common misrepresentations, omissions and statements of material facts that were important to Plaintiffs and to all Class members, and upon which Plaintiffs and all Class members relied upon and/or reasonably could be expected to rely upon under all of the circumstances.

68. Civil Code § 1780(a)(2) permits any court of competent jurisdiction to enjoin practices that violate Civil Code § 1770.

69. Plaintiffs and the Class are also entitled to recover attorneys' fees and costs pursuant to Civil Code §§ 1780 and 1781.

70. Plaintiffs and Class members, as described herein, have suffered damages and/or injury in fact as a result of Defendants' violations of the CLRA.

71. Under Civil Code § 1782(a), the required thirty (30) day notice was provided to Defendant before the filing of this Complaint pursuant to Civil Code § 1782(d) but, nevertheless, Defendant failed and refused to take appropriate corrective action. Moreover, since no claim for damages is asserted in this Complaint at this time under the CLRA, and only injunctive relief is currently sought, and Plaintiffs have again provided Defendant with notice under the CLRA, Defendant will be afforded an additional thirty (30) days in which to cure its breaches of the CLRA, and to correct, repair, replace and otherwise rectify the violations of Civil Code § 1770.

before it faces any potential claim for damages under the CLRA.

72. Plaintiffs reallege and incorporate the preceding paragraphs as if fully set forth
herein.

73. The subject vehicles are "consumer goods," as that term is defined by the Song-Beverly Act.
74. BMW is a "manufacturer," as that term is defined by the Song-Beverly Act.
75. Plaintiffs are "buyers," as that term is defined by the Song-Beverly Act.
76. At all pertinent times, BMW also was a merchant in the sale of the subject
vehicles to Plaintiffs and the Class members and, by operation of law, BMW provided Plaintiffs
and the Class members with an implied warranty of merchantability in the sale and lease of the
subject vehicles.

77. During the manufacturing process, and prior to the placement of the run-flat tires
on the subject vehicles, as well as prior to marketing and selling the subject vehicles, BMW,
through testing or other means, knew or should have known that the Turanza and Potenza run-
flat tires were defective and subject to premature and uneven tire wear (and excessive noise).
78. Plaintiffs' vehicles and the subject vehicles are not fit for the ordinary purposes
for which such automobiles are used, because the premature and uneven tire wear (and excessive
noise) at issue results in the occupants of the subject vehicles being forced to drive on
significantly impaired tires, or face the risk of having to do so, which does not meet with the
reasonable expectations of Plaintiffs or any other owners and lessees as to the manner in which
the subject vehicles should perform when used for their ordinary purposes, because the manner in
which the subject vehicles perform is so deficient and below a minimum level of quality so as to
render them unfit for their ordinary use and purpose.

79. By the conduct described herein, including, but not limited to, marketing and
selling the subject vehicles with the condition described in this Complaint, as well as by failing
to repair the subject vehicles by replacing the run-flat tires as needed, BMW breached the
representations made in the CLRA.

THIRD CAUSE OF ACTION
(Violations Of The Song-Beverly Act - Implied Warranty)

before it faces any potential claim for damages under the CLRA.

1. Impaired warranty of merchantability.

2. Plaintiff's and the Class members have been damaged as a result of BMW's breach of the implied warranty of merchantability.

3. Plaintiff's and the Class members are entitled to all remedies available under the Song-Beverly Act for breach of implied warranty.

4. Plaintiff's and Class members are entitled to all remedies available under the Song-Beverly Act for breach of implied warranty.

5. WHEREFORE, Plaintiff's, on behalf of themselves and all others similarly situated, pray for judgment against Defendant as follows:

6. PRAYER FOR RELIEF

7. Plaintiff's and the Class members have been damaged as a result of BMW's breach of the implied warranty of merchantability.

81. Plaintiff's and the Class members are entitled to all remedies available under the Song-Beverly Act for breach of implied warranty.

8. An order certifying this case as a class action and appointing Plaintiff's and their counsel to represent the Class;

9. With interest thereon from the date of payment, to the victims of such violations;

10. Restitution and disgorgement to the extent permitted by applicable law, together with interest thereon from the date of payment, to the victims of such violations;

11. Civil penalties to the extent permitted by applicable law;

12. To the extent that Defendant has continued to market and sell the subject vehicles, and otherwise engage in the conduct challenged in this action, an order requiring Defendant to immediately cease its wrongful conduct as set forth above, as well as enjoining Defendant from continuing to conceal material information and conduct business via the unlawful and unfair practices complained of herein; and an order requiring Defendant to engage in corrective notice campaigns;

13. Business acts and practices complained of herein; and an order requiring Defendant to engage in immediate cessation of its wrongful conduct as set forth above, as well as enjoining Defendant from continuing to conceal material information and conduct business via the unlawful and unfair practices complained of herein; and an order requiring Defendant to engage in corrective notice campaigns;

14. For reasonable attorneys' fees and the costs of prosecuting this action;

15. And otherwise engage in the conduct challenged in this action, an order requiring Defendant to to the extent that Defendant has continued to market and sell the subject vehicles,

16. Immediately cease its wrongful conduct as set forth above, as well as enjoining Defendant from continuing to conceal material information and conduct business via the unlawful and unfair practices complained of herein; and an order requiring Defendant to engage in corrective notice campaigns;

17. For statutory pre-judgment interest; and

18. For such other relief as this Court may deem just and proper.

19. G.

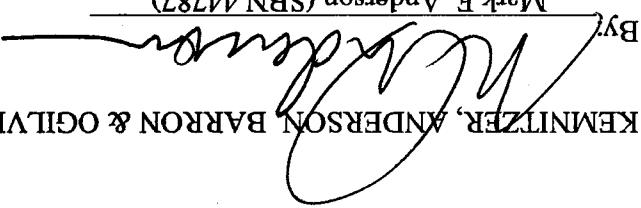
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Plaintiffs demand a trial by jury on all causes of action so triable.

JURY DEMAND

Dated: May 30, 2007

Morris v BMW Complaint

Exhibit A

Kevin Morris

forgoing is true and correct. Executed this 30 day of May, 2007 at Ross, California.

I declare under penalty of perjury under the laws of the State of California that the

including the country in which this Court sits.

Amherca, LLC, is a Delaware corporation that does business throughout this judicial district,
4. To the best of my knowledge, information and belief, Defendant, BMW of North

RFT run-flat tires on or about August 4, 2005 from Courtesy Motors in Chicago, California.

3. I purchased a new 2006 BMW 330i equipped with Bridgestone Turanza EL42

am a named Plaintiff in this litigation.

2. I am an adult citizen of the State of California. I reside in Ross, California and I

matters stated herein that are based upon information or belief, which I believe to be true.

1. I make this declaration based upon my personal knowledge except as to those

1. Kevin Morris, declare under penalty as follows:

DECLARATION OF KEVIN MORRIS

JURY TRIAL DEMANDED

Defendant.

BMW OF NORTH AMERICA, LLC,

v/s.

Plaintiffs,

CCLASS ACTION

Similarly Situated,

of Themselves and All Others

SEMWOW, On Behalf

KEVIN MORRIS and GLENN R.

FOR THE NORTHERN DISTRICT OF CALIFORNIA
IN THE UNITED STATES DISTRICT COURT

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Glenn R. Semow

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 30th day of May, 2007 at Oakland, California.

including the county in which this Court sits.

AMERICA, LLC, is a Delaware corporation that does business throughout this judicial district,

4. To the best of my knowledge, information and belief, Defendant, BMW of North America, LLC, purchased a new 2006 BMW 330i equipped with Bridgestone Potenza RE050 run-flat tires on or about September 25, 2006 from Weatherford BMW in Emeryville, California.

3. I purchased a new 2006 BMW 330i equipped with Bridgestone Potenza RE050

I am a named Plaintiff in this litigation.

2. I am an adult citizen of the State of California. I reside in Oakland, California and matters stated herein that are based upon information or belief, which I believe to be true.

1. I make this declaration based upon my personal knowledge except as to those

I, Glenn R. Semow, declare under penalty of perjury as follows:

DECLARATION OF GLENN R. SEMOW

Defendant : JURY TRIAL DEMANDED

BMW OF NORTH AMERICA, LLC,

vs.

Plaintiffs :

KEVIN MORRIS and GLENN R.
SEMOV, On Behalf
of Themselves and All Others
Similarly Situated,

CIVIL ACTION NO. : 07cv016023

CLASS ACTION

FOR THE UNITED STATES DISTRICT COURT
IN THE UNITED STATES DISTRICT COURT OF CALIFORNIA